

Jonathan O. Hafen (6096)  
Jenifer L. Tomchak (10127)  
PARR BROWN GEE & LOVELESS  
185 South State Street, Suite 800  
Salt Lake City, UT 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750  
[jhafen@parrbrown.com](mailto:jhafen@parrbrown.com)  
[jtomchak@parrbrown.com](mailto:jtomchak@parrbrown.com)

Attorneys for Plaintiff

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

---

IMPERIAL PREMIUM FINANCE, LLC,  Plaintiff and Counterclaim Defendant,  vs.  SYLVIA HERSKOWITZ,  Defendant and Counterclaim Plaintiff.	<b>MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS</b>  Case No. 2:09-cv-00861  Honorable Tena Campbell
---	---

Plaintiff Imperial Premium Finance, LLC (“Imperial”), by and through counsel, respectfully submits this Memorandum in Opposition to Defendant Sylvia Herskowitz’s motion to dismiss the Complaint for lack of jurisdiction.

The sole premise of Defendant’s motion is that “Imperial has failed to identify its members and has failed to identify where each of its members reside. Consequently, it is unclear whether complete diversity is present in this case.”

As the attached Declaration of Christopher O’Reilly demonstrates, Imperial Holdings, LLC was the sole member of Imperial at the time the Complaint was filed. When the Complaint was

filed, Imperial Holdings, LLC resided in the State of Florida. Declaration of Christopher O'Reilly at ¶ 5 (attached hereto as Exhibit A).

As a result, complete diversity is present in this case and, therefore, Defendant's motion should be denied. *See Shannon's Rainbow, LLC v. Supernova Media, Inc.*, 683 F.Supp. 2d 1261, 1266 (D. Utah 2010) (for purposes of 28 U.S.C. § 1332(a)(1), residence of member(s) of an LLC is determinative); *Freeport-McMoran v. KN Energy, Inc.*, 498 U.S. 426 (1991) (diversity assessed at time complaint filed).

DATED this 28<sup>th</sup> day of March, 2011.

PARR BROWN GEE & LOVELESS

By: /s/ Jonathan O. Hafen  
Jonathan O. Hafen  
Jenifer L. Tomchak  
*Attorneys for Imperial Premium Finance, LLC*